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MEMORANDUM

TO: Committee on Legal Services

FROM: Kip Kolkmeier, Office of Legislative Legal Services

DATE: December 5, 2017

SUBJECT: Rules of the Transportation Commission, Department of Transportation, concerning transport permits for the movement of extra-legal vehicles or loads, 2 CCR 601-4, Rule 1100 (formerly Rule 1004)¹, (LLS Docket No. 170208; SOS Tracking No. 2016-00600).²

Summary of Problem Identified and Recommendation

Section 24-4-103 (12.5)(a), C.R.S., requires that a rule incorporating material by reference must state the address of the agency where the incorporated material is available for public inspection, where a copy of the incorporated material is available for a reasonable charge from the agency adopting the rule, and where a copy is available from the agency originally issuing the material. But Transportation Commission Rule 1100 fails to include the required information. **Because Rule 1100 omits information required by section 24-4-103 (12.5)(a), C.R.S., we recommend**

¹ The Transportation Commission filed a Correction Letter with the Colorado Secretary of State dated May 10, 2017, requesting that Rule 1004 regarding incorporation by reference be renumbered as Rule 1100.

² Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2018, unless the General Assembly acts by bill to postpone such expiration.

that Rule 1100 of the rules of the Transportation Commission concerning transport permits for the movement of extra-legal vehicles or loads not be extended.

Analysis

Rule 1100 fails to comply with the statute because it does not state the address of the agency where the incorporated material is available for public inspection, where a copy of the incorporated material is available for a reasonable charge, or where copies are available from the agency originally issuing the material.

Section 42-4-510 (1) (b) (I), C.R.S., authorizes the Transportation Commission to promulgate rules regarding state permits:

42-4-510. Permits for excess size and weight and for manufactured homes - rules. (1)(b)(I) The application for any permit shall specifically describe the vehicle and load to be operated or moved and the particular highways for which the permit to operate is requested, and whether such permit is for a single trip, a special, or an annual operation, and the time of such movement. All state permits shall be issued in the discretion of the department of transportation, **subject to rules adopted by the transportation commission** in accordance with this section and section 42-4-511. All local permits shall be issued in the discretion of the local authority pursuant to ordinances or resolutions adopted in accordance with section 42-4-511. Any ordinances or resolutions of local authorities shall not conflict with this section. **(Emphasis added)**

Section 24-4-103 (12.5)(a)(II) and (IV), C.R.S., require a rule incorporating material by reference to state the address where the incorporated material is available for public inspection, where a copy of the incorporated material is available for a reasonable charge from the agency adopting the rule, and where a copy is available from the original issuer of the material:

24-4-103. Rule-making - procedure - definitions - statutory citation correction - repeal. (12.5) (a) A rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, if:

(II) The reference fully identifies the incorporated code, standard, guideline, or rule by citation and date, identifies the address of the agency where the code, standard, guideline, or rule is available for public inspection, and states that the rule does not include any later amendments or editions of the code, standard, guideline, or rule;

(IV) The rule states where copies of the code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule; and

While Rule 1100 purports to provide for incorporation by reference, it omits the required information.

CHAPTER 11

INCORPORATION BY REFERENCE

1100 The Rules are intended to be consistent with and not be a replacement for the federal requirements set forth in “Fixing America’s Surface Transportation Act” or the “FAST Act” codified at 23 U.S.C. 127 (2016), and the regulations set forth under Title 23 of the Code of Federal Regulations, which are hereby incorporated into these Rules by reference, and do not include any later amendments.

Recommendation

We therefore recommend that Rule 1100 of the rules of the Transportation Commission concerning transport permits for the movement of extra-legal vehicles or load not be extended because Rule 1100 omits information required by section 24-4-103 (12.5)(a)(II) and (IV), C.R.S.